

General Terms and Conditions (GTC) of Büchi AG

1. SCOPE AND VALIDITY

- 1.1. These General Terms and Conditions ("GTC") shall govern the contractual relationships between the Customer ("Customer") and Büchi AG ("Büchi").
- 1.2. The GTC shall govern the delivery of products ("Products") and the provision of services ("Services"). They shall apply to all Products and Services which are sourced from Büchi by the Customer.
- 1.3. In order for the GTC to apply, it is not necessary that they are referred to in the Contract.
- 1.4. Any general terms and conditions of the Customer shall be excluded.

2. CONCLUSION OF THE CONTRACT AND ELEMENTS THEREOF

- 2.1. Quotations by Büchi shall be valid for a duration of 30 days, provided that the quotation does not specify a different period of validity. The quotation can stipulate additional provisions concerning its validity.
- 2.2. A contract ("Contract") shall be concluded as follows: a) by issuance of an order confirmation by Büchi or b) by mutual execution of a contractual document.
- 2.3. If performance by Büchi requires a governmental permit, the Contract shall only enter into effect once such permit has been granted.
- 2.4. Brochures and catalogs shall not be binding. Specifications in plans, drawings and technical documents shall only be binding if they are referred to explicitly in the Contract. In this case, the specifications are subject to the usual margins if Büchi did not expressly declare them as being precise.
- 2.5. Regarding the conditions of delivery, the transfer of risk and the allocation of additional costs, the Incoterms (2010) indicated in the Contract shall be part thereof. Absent any other agreement to the contrary, the rule FCA at the seat of Büchi (Uster, Switzerland) shall apply. In case of contradictions between the Contract and the applicable Incoterms or, as the case

may be, the GTC and applicable Incoterms, the Contract or, as the case may be, the GTC shall prevail.

- 2.6. In case of contradictions, a Contract concluded pursuant to clause 2.2 shall prevail over the GTC and such Contract shall replace any contractual relationships concerning its subject-matter.

3. PRODUCTS AND SERVICES OF BÜCHI

The Products and Services of Büchi are specified in the Contract in an exhaustive manner.

4. OBLIGATIONS OF THE CUSTOMER

- 4.1. The Customer shall – in a timely manner – create the conditions necessary for Büchi to deliver the Products and perform the Services pursuant to the terms of the Contract. This shall include in particular the provision of all the necessary information by the Customer so that Büchi can effect performance.
- 4.2. If the Customer fails to fulfil his obligations, Büchi may – after granting an extension of time in writing – withdraw from the Contract and claim damages, it being understood that Büchi retains and reserves any and all other rights.
- 4.3. The Customer may use the Products and Services of Büchi only in accordance with their purpose. In this regard, the Customer is obligated to use qualified personnel and observe any and all regulatory provisions which are related to the usage of the Products and the Services.

5. DATES

- 5.1. Dates and terms of delivery concerning Büchi as debtor are only guidelines, unless they are specified as being binding in the Contract.
- 5.2. Dates and terms of delivery concerning Büchi as debtor are extended appropriately, if the Customer or third parties are behind on the works and acts to be performed by them (in particular the provision of all information and subjoined products necessary for the execution of the Contract and the performance of any advance payment obligations by the Customer) or if obstacles arise which Büchi – despite application of due care – is unable

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to avert, such as the absence of permissions, the issuance of governmental restrictions on exports or imports and similar measures and in case of force majeure. Büchi is obliged to inform the Customer about such delays in a reasonable manner.

6. PRICES AND ADDITIONAL COSTS

- 6.1. The Customer shall pay the price specified in the Contract for the delivery of the Products and provision of the Services. Unless agreed to the contrary, the price is in Swiss Francs and exclusive of any applicable Value Added Tax (VAT).
- 6.2. Services (including – with respect to the delivery of Products – the Installation if so agreed) shall be remunerated on a time and material basis at the rates of Büchi in force at the respective time, unless agreed to the contrary.
- 6.3. Subject to an agreement to the contrary, the allocation of additional costs shall be governed by the agreed Incoterms (clause 2.5). All prices are quoted without all additional costs, i.e. without packaging, without all other additional costs and without any deductions.

7. INVOICING AND PAYMENT

- 7.1. Subject to an agreement to the contrary, the remuneration for the Products and Services is invoiced by Büchi at the time of delivery of the Products or the provision of the Service. If the remuneration amounts to CHF 30'000 up to CHF 150'000, one-third of the total remuneration is due and payable at the time of the conclusion of the Contract. If the remuneration exceeds CHF 150'000, the advance payment at the time of the conclusion of the Contract shall amount to at least one-third of the total remuneration.
- 7.2. Payment shall be effected at the domicile of Büchi without deduction of any discounts, expenses, charges, fees, duties and the like.
- 7.3. Invoices of Büchi shall be paid with a payment period of 30 days from the date of the issuance of the invoice. Advance payments to be paid at the time of the conclusion of the Contract shall be due and payable immediately.
- 7.4. If the invoice is not paid in such payment period, the Customer shall be in default of

payment without further notice and shall owe default interest in the amount of 5% p.a.

- 7.5. The minimum invoicing amount is CHF 100 (strictly net). Thus, the remuneration of Büchi amounts to at least CHF 100 (strictly net) in any case.
- 7.6. The dates of payment shall also be observed if the shipping, the transport and the potential Installation or the beginning of operation is delayed due to reasons, which Büchi is not responsible for.
- 7.7. If the Customer is in default with respect to a payment or if Büchi is forced to anticipate that the Customer will fail to make payments, Büchi may, without prejudice to any of its other claims and rights, suspend further execution of the Contract or withhold performance, until new terms of payment and delivery or, as the case may be, securities are agreed. If no respective agreement can be reached within a reasonable amount of time, Büchi may withdraw from the Contract and claim damages.

8. RESERVATION OF TITLE

- 8.1. Büchi shall remain proprietor of any Products until full payment. As long as such reservation of title is in force, the Customer may not sell, encumber or – in any other fashion – dispose of the Products.
- 8.2. The Customer is obligated to cooperate with respect to measures which are necessary to safeguard Büchi's title; in particular, the Customer authorizes Büchi herewith to register a reservation of title in public registers at the domicile of the Customer. Any fees arising in relation thereto shall be borne by the Customer.
- 8.3. Should the Customer become aware of measures – or threats of such measures – that encumber the property of Büchi in the Products, the Customer shall inform Büchi in writing without delay.

9. DELIVERY CONDITIONS, PASSING OF RISK AND PLACE OF PERFORMANCE

- 9.1. Subject to an agreement to the contrary, the delivery conditions, the passing of risk and the place of performance shall be

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governed by the agreed Incoterms (clause 2.5).

- 9.2. If the shipping is delayed due to the request of the Customer or due to other circumstances, which Büchi is not responsible for, the passing of risk to the Customer shall occur at the time originally intended. From this moment onwards, Products shall be stored on the account and on the risk of the Customer.
- 9.3. Subject to an agreement to the contrary, the place of performance for Services shall be at the domicile of Büchi.
- 9.4. Subject to an agreement to the contrary, Büchi shall be permitted to perform partial deliveries. The passing of risk shall, also for each partial delivery, be subject to the provisions above.

10. TRANSPORTATION AND INSURANCE

- 10.1. Subject to an agreement to the contrary, the transportation and the insurance shall be governed by the agreed Incoterms (clause 2.5).
- 10.2. Transportation is effected on the account and risk of the Customer. Subject to an agreement to the contrary, Büchi determines the carrier.
- 10.3. The Customer is responsible for insurance against damages of any nature.
- 10.4. Any special requests concerning shipping, transport and insurance shall be notified to Büchi in a timely manner. Any costs in relation thereto shall be borne by the Customer.
- 10.5. In principle, packaging is charged additionally by Büchi and will not be taken back. If the packaging was specified as being Büchi's property, the Customer is required to send the packaging back to the point of departure at its own cost.
- 10.6. Complaints of the Customer in connection with shipping or transport shall be directed – without any delay – to the last carrier upon receipt of the delivery or the freight documents.

11. CHANGES TO THE PRODUCTS AND SERVICES

- 11.1. Both parties may request changes to the Products and Services. If such change

leads to additional costs, expenses, or expenditures, Büchi shall be compensated by the Customer in relation thereto.

12. INSTALLATION

- 12.1. The delivery of the Products shall only include their installation by Büchi at the point of their delivery ("Installation") if such Installation has been expressly agreed upon.
- 12.2. For any Installations, the Customer shall be obligated to supply the following at his own expense: lighting, compressed air (if necessary), water, electric power, the required energy to connect the delivered Products, lifting gears and means of transport.
- 12.3. If the Installation is delayed on request of the Customer or due to other reasons that Büchi is not responsible for, any additional costs shall be borne by the Customer.

13. SOFTWARE AND INTELLECTUAL PROPERTY

- 13.1. Where a Product includes software, the Customer shall be granted the non-exclusive and non-transferrable right to use the software for the contractually specified purpose. For software of third-party manufacturers, their license terms shall apply exclusively. Subject to an agreement to the contrary, the right to use shall neither extend to the source code of the software nor to its independent editing. It is prohibited to copy and to decompile the source code.
- 13.2. Any intellectual property rights relating to the Products and Services shall remain the exclusive property of Büchi.

14. WARRANTY

- 14.1. In this clause 14, warranty obligations of Büchi or, as the case may be, warranty rights of the Customer are specified in an exhaustive manner; thus, any statutory warranty obligation or, as the case may

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- be, rights as well as any statutory obligations or, as the case may be, rights are excluded.
- 14.2. Büchi warrants, subject to the following terms, the following regarding the Products:
- Warranted properties as well as the warranty that the Products shall be free from physical or legal defects nullifying or reducing their value or their suitability for the intended use that was disclosed to Büchi in writing.
 - Cleaning condition: "as manufactured". Any exceeding cleaning, in particular the regular cleaning before the beginning of operation, shall be the duty of the Customer.
- 14.3. Büchi warrants the following regarding Products that are made of glass:
- Proper melting points including stressless cooling.
 - Undamaged glass surfaces. The guidelines and margins of the standard AD 2000 (N 4 appendix 1) shall apply.
- 14.4. Regarding the Services, Büchi warrants that they are performed with due care and diligence.
- 14.5. For normal wear and tear, for expendable items and for consumables, any and all warranty is excluded.
- 14.6. Büchi shall advise the Customer to the best of its knowledge – in accordance with the current state of knowledge and the current state of the art – regarding the suitability of the Products for the intended purpose and regarding the compatibility of materials, it being understood that Büchi does not assume any warranty or liability in relation thereto.
- 14.7. The warranty shall not apply and shall thus be void where a defect was caused in part or in full by the Customer, a third party or a random event. This shall also apply in the following cases (irrespective of whether the defect was caused or affected hereby): improper Installation (if such Installation was not assumed by Büchi), undue or improper usage (in particular in case of nonobservance of the instruction manual, dedication of personnel without or with inadequate training, excessive usage as well as usage of improper resources or accessories), omitted or insufficient maintenance (if maintenance was not assumed by Büchi), improper repairs, usage of inadequate spare parts, chemical or electrolytic effects.
- 14.8. The Customer shall inspect the Products after their delivery as follows:
- Regarding the condition of the packaging and related, obvious damages to the Products: Within 10 days.
 - With respect to all other aspects: Within 30 days.
- The Customer shall notify Büchi of any determined or obvious defects within the above-mentioned deadlines in writing. Any other defects shall be notified to Büchi immediately after their discovery in writing. In addition, the Customer shall immediately implement any and all appropriate measures with respect to the mitigation of damages. In the event that the Customer fails to observe the aforesaid obligations, any and all warranty rights shall be excluded.
- 14.9. The warranty period is 12 months. It begins with the shipping of the Products (clause 9). If Büchi is responsible for the Installation, the warranty period shall begin upon completion of the Installation. If the shipping or the Installation are delayed due to reasons, which Büchi is not responsible for, the warranty period shall expire 18 months after the notification of readiness for shipment.
- 14.10. During the warranty period, the Customer shall be entitled to remedy of defects by means of free rectification by Büchi. For this purpose, the Customer shall send the Product to Büchi, all at its own expense and risk. If such shipping to Büchi is unreasonable, Büchi shall effect the rectification free of charge at the domicile of the Customer. In any case, Büchi is, at its own discretion, permitted to remedy the defect in any other fashion, e.g. by new delivery of the Product in accordance with the provisions of the Contract.
- 14.11. Replaced parts or Products shall become the property of Büchi.
- 14.12. With respect to remedied defects, the warranty period shall be 6 months. It shall – in any case – amount to 24 months at

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most, beginning with the original start date of the warranty period (clause 14.9).

14.13. Where Büchi is unable to remedy a detected defect, the Customer shall, with respect to proven defects and after setting a reasonable extension of time in writing, be entitled to request a reduction of the price corresponding to the impact in value or – only in the event of significant defects, which impair the respective practical value to an extent that, from a just perspective, renders it unreasonable to expect the acceptance of the respective Product by the Customer – to withdraw from the Contract.

14.14. The Customer shall support Büchi with respect to the fulfilment of the warranty obligations.

15. MAINTENANCE

Products shall be maintained in accordance with the respective requirements and by personnel qualified for such maintenance. The Customer shall be responsible for maintenance, unless it has assigned this task to Büchi.

16. READINESS FOR DELIVERY OF SPARE PARTS

Büchi aims at delivering spare parts to the Customer – subject to a corresponding order – during the following periods:

- Electronics: minimum 5 years from the date of the conclusion of the Contract regarding the specific Product;
- Plant parts and mechanical components: minimum 10 years from the date of the conclusion of the Contract regarding the specific Product.

17. LIABILITY

17.1. Büchi shall be liable for damages incurred by the Customer due to a culpable breach of contract by Büchi – regardless of the legal basis – for an amount up to the value of the Contract.

17.2. Liability for loss of profits, unrealized savings, recourse claims asserted by third parties, damages resulting from interruptions of operations as well as for any and

all indirect and consequential damages shall be excluded.

17.3. The limitation of liability stipulated in this clause neither applies to personal injury nor to damages caused intentionally or by gross negligence. With respect to such damages, Büchi shall be liable without limitation.

17.4. The Customer shall hold Büchi harmless for any and all damages resulting from Customer's failure to observe regulatory provisions and the fact that third parties (including the authorities) assert claims against Büchi as a consequence thereof.

18. FORCE MAJEURE

18.1. Force majeure refers to events over which the parties have no control. Cases of force majeure include in particular: Disruptions of the public power supply and the communications and transportation infrastructure, governmental measures, malware or hacker attacks, fire, extraordinary weather events, epidemics, nuclear and chemical accidents, earthquakes, war, terrorist attacks, strikes and sabotage.

18.2. Where a party is prevented from fulfilling its contractual obligations in whole or in part due to force majeure, the party concerned shall be released from its liability due to non-performance as long as the force majeure event continues.

18.3. In case of a lasting force majeure event, either party may terminate the Agreement retroactively as per the date the force majeure started to occur. Products delivered and Services rendered up until this date shall be remunerated.

19. CONFIDENTIALITY

19.1. Büchi and the Customer undertake to maintain confidentiality of all information and data of both parties that become known to them in connection with or with respect to the Contract (e.g. quotations, drawings, project documentation, samples, models). Information that is generally known or lawfully acquired by the parties independently of the contractual rela-

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tionship shall not be deemed to be confidential. Statutory disclosure requirements are reserved.

- 19.2. The duty of confidentiality shall also include the prohibition of use for non-contractual purposes and shall survive the termination of the Contract as long as an interest in confidentiality by Büchi or the Customer exists.
- 19.3. Büchi and the Customer shall ensure that its employees, associates and subcontractors are also bound to confidentiality. The confidentiality obligations shall at least correspond to this clause of the Contract.
- 19.4. Existing confidentiality obligations between Büchi and the Customer regarding confidential information are reserved.

20. FINAL PROVISIONS

- 20.1. Changes of or amendments to the Contract or the GTC require the written form and the signature by both parties.
- 20.2. The Customer does not have a right to set-off, unless his claims are acknowledged by Büchi in writing or finally established through judicial proceedings.
- 20.3. The invalidity or voidability of any provision or any provisions of a Contract do not render the other provisions invalid. In case of such invalidity or voidability, the parties seek to replace the invalid or voidable provision with a different valid and enforceable provision, which resembles as close as possible the legal and economic content of the replaced provision.
- 20.4. Transfer of a contractual relationship or the assignment of claims by the Customer requires the written consent of Büchi.
- 20.5. The Contract and any occurrences regarding property law relating to the Contract shall be subject exclusively to the material laws of Switzerland under the exclusion of the United Nations Convention dated 11 April 1980 on the International Sale of Goods.
- 20.6. The courts at the domicile of Büchi shall have jurisdiction with respect to any and all disputes arising from or in connection with the Contract. Moreover, Büchi shall be entitled to assert its own claims at the Customer's place of domicile.